

**FILED**

**JUL 29 1998**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

(10)  
No. 97-1396

In The  
**Supreme Court of the United States**

October Term, 1997

— ♦ —  
VICKY M. LOPEZ, CRESCENCIO PADILLA,  
WILLIAM A. MELENDEZ, and DAVID SERENA,

*Appellants,*

vs.

MONTEREY COUNTY, CALIFORNIA,  
STATE OF CALIFORNIA,

*Appellees,*

and

WENDY DUFFY,

*Intervenor-Appellee.*

— ♦ —  
On Appeal From The United States District Court  
For The Northern District Of California

— ♦ —  
**BRIEF ON THE MERITS OF  
APPELLEE MONTEREY COUNTY**

— ♦ —  
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**QUESTION PRESENTED**

WHETHER A STATE LAW ADOPTED BY AN UNCOVERED JURISDICTION UNDER SECTION 5 IS REQUIRED TO BE PRECLEARED PRIOR TO IMPLEMENTATION WITHIN OR BY A COVERED JURISDICTION INsofar AS SUCH STATE LAW AFFECTS VOTING IN SUCH COVERED JURISDICTION.

**LIST OF ALL PARTIES  
IN LOWER COURT PROCEEDINGS**

The following is a list of all the parties to the proceeding in the lower court whose order and judgment of dismissal are under review:

**Appellants:**

Vicky M. Lopez, Crescencio Padilla, William  
A. Melendez, and David Serena

**Appellees:**

Monterey County, California, and the State  
of California

**Intervenor-Appellee:**

Wendy Duffy

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**BRIEF ON THE MERITS OF  
APPELLEE MONTEREY COUNTY**

**ARGUMENT**

Appellee, Monterey County, supports the appeal as filed in this case. Monterey County concurs with the essential arguments of the Appellants that state law affecting voting, insofar as such law may affect elections within a covered jurisdiction, must be precleared in the manner required under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

Monterey County is indeed "a covered jurisdiction" subject to the Section 5 preclearance requirements of the Voting Rights Act, 42 U.S.C. § 1973c. Nevertheless, Monterey County's designation as a "covered jurisdiction" was strictly due to exigent circumstances, entirely outside of the control or influence of Monterey County and its local officials and officers.

Monterey County was designated as a covered jurisdiction in 1971 pursuant to the criteria set forth in Section 4(b) of the Voting Rights Act, 42 U.S.C. § 1973b(b). The impermissible "test or device" maintained by Monterey County was a facet of state law, mandated by the State of California as a part of the State's comprehensive elections law and required to be administered by every county in the state. This provision of state law, a part of the State's statutory scheme since 1895, was a provision that required persons seeking to register to vote to be "able to read the Constitution in the English language and to write his name." 1895 Stats. Chap. 186. As a political subdivision of the State, Monterey County was required to comply with and implement this provision of state law.



This provision of state law was identified by the United States Attorney General as a literacy test for voting on November 1, 1968. 35 Fed. Reg. 12354 (1970).

The second half of the Section 4(b) criteria was satisfied when the Director of the Census determined that less than 50% of the voting age population in Monterey County had voted in the 1968 presidential election. 36 Fed. Reg. 5809 (1971). In 1968, Monterey County was the home of the Fort Ord Military Reservation, the Naval Post Graduate School, and the Defense Language Institute at which several thousand soldiers and officers, and their dependents, were stationed. Fort Ord was also a recruit training facility that provided initial training to several thousand soldiers prior to assignment in conjunction with the Vietnam War. (According to the 1960 Census, the total population of Monterey County was 198,351 of which 32,723 resided on Fort Ord.) In addition, Monterey County was in 1968, and still is, the home of Soledad State Prison, a prison facility that houses several thousand convicted ex-felons who are ineligible to vote. Simply stated, Monterey County was determined to be a "covered jurisdiction" solely because it implemented state law and because Monterey County was the home to several thousand members of the United States military during a time of crises as well as serving as the site of a state prison housing several thousand convicts who could not vote in the presidential election of 1968.

Monterey County is a covered jurisdiction in part because the County was required to implement a state law. At issue in this case is whether a state law that affects voting in a covered jurisdiction is required to be precleared, at least insofar as such state law affects voting

in a covered jurisdiction. Monterey County's argument is very simple in this regard: If the application of state law is sufficient for designation under Section 5 as a "covered jurisdiction," then implementation of state law, insofar as such state law affects voting in a covered jurisdiction, should be subject to the preclearance requirements of Section 5.

Monterey County is prepared to submit the various court consolidations and all implementing local ordinances as well as state laws to the Department of Justice for preclearance if this Court so requires, notwithstanding the efforts of the County and the Appellants to resolve this dispute through the implementation of a negotiated election plan as part of an overall settlement of the Appellants' case against the County. It is imperative that this Court address the critical issue of whether state laws which affect voting in Monterey County, a "covered jurisdiction" under Section 5, must be precleared before such laws can be implemented within Monterey County.

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### CONCLUSION

Monterey County joins with the Appellants and the United States in requesting that this Court reverse the decision of the district court and remand the matter for the entry of appropriate relief.

Dated: July 29, 1998.

Respectfully submitted,

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